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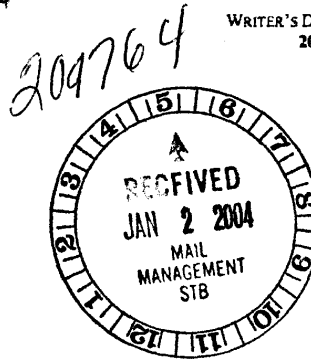
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January 2, 2004



**Via Facsimile and US Mail**

The Honorable Vernon A. Williams, Secretary  
Office the Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington, D.C. 20423-0001

**Re: FD 34429; New York City Economic Development Corp - -  
Petition for Declaratory Order**

Dear Secretary Williams:

The undersigned is Special Counsel to the New Jersey Department of Environmental Protection ("NJDEP") and in that capacity respectfully requests that the Board extend the comment period that has been established in this proceeding by three (3) weeks.

By way of background, on October 29, 2003, the New York City Economic Development Corporation, acting on behalf of the City of New York, New York ("NYCEDC"), filed a petition with the Board, which sought the institution of a declaratory order proceeding. In a notice served December 10, 2003, the Board published a notice concerning the nature and scope of the issues raised in NYCEDC's petition and provided for interested persons to file written comments by January 9, 2004, with replies thereafter due on January 29, 2004. Although NJDEP has not yet determined whether it will file comments in this proceeding, it is required to request this extension.

The petition raises a number of issues that are of significant importance to NJDEP and other state environmental regulatory authorities, in that, *inter alia*, NYCEDC is proposing to engage in what appears to be a substantial track construction and expansion project of the Fresh Kills Landfill on Staten Island without any state or federal

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The Honorable Vernon A. Williams, Secretary  
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environmental review of the project. NYCEDC first proposes that the Board's environmental oversight, pursuant to the requirements of the National Environmental Policy Act, would not be appropriate as the proposed track construction is allegedly not subject to the Board's licensing authority in view of the provisions of 49 U.S.C. §10906. And, in light of the federal preemption in 49 U.S.C. §10501(b), NYCEDC further argues that the project is exempted from all other planning and construction oversight that might otherwise be applicable to projects that are to be developed in sensitive environmental areas, including wetland or coastal zone areas. Accordingly, the scope of NYCEDC's petition seems very broad and may well affect the nature of state environmental regulation well beyond this project or the State of New York.

In view of the recently concluded holiday season, it has not been possible for NJDEP officials to meet with either representatives of NYCEDC or the New York State Department of Environmental Conservation ("NYSDEC") in an attempt to better clarify or narrow the issues that are of concern to NYCEDC. NJDEP does intend to discuss the issues arising out of NYCEDC's petition with those agencies within the immediate future and will then be able to determine what position, if any, it might take on this matter and whether its participation would be helpful to the Board. Unfortunately, and while NJDEP recognizes that NYCEDC has sought expedited consideration of its petition and is reluctant to interfere with that request, it has not been possible for NJDEP to meet with the necessary representatives of NYCEDC or NYSDEC until now. Hence, it will not be possible to hold those discussions or develop and present any comments that may be necessary within the time constraints established by the Board's December 10, 2003 Notice.

Accordingly, NJDEP respectfully requests that the Board extend the comment period by three (3) weeks, so that interested persons would be able to file written comments concerning NYCEDC's petition by January 30, 2004, with any replies due 20 days later (i.e., on February 19, 2004).

If you have any question concerning this, please do not hesitate to contact me. In the meantime, we appreciate your cooperation and courtesy in this matter.

Very truly yours,



Edward D. Greenberg

EDG

cc: David M. Konschnik, Esquire (via facsimile)  
Charles A. Spitulnik, Esquire (via facsimile)  
Louis Oliva, Esquire (via facsimile)



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**MESSAGE OR SPECIAL INSTRUCTIONS:**

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